80-6607

NO.

RECEIVED
JUN 1 1981
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PAMELA RAY,

Appellant,

ORIGINAL COPY

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From The Appellate
Court Of Illinois,
Fifth District

APPELLEE'S MOTION TO DISMISS OR AFFIRM

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

HERBERT LEE CAPLAN,

MELBOURNE A. NOEL, JR.,
Assistant Attorneys General,
188 W. Randolph St., Suite 2200,
Chicago, Illinois 60601,
(312) 793-2570,

COUNSEL FOR APPELLEE.

JACK DONATELLI,
Assistant Attorney General,

OF COUNSEL.

QUESTIONS PRESENTED

1. Whether a parent is denied due process of law where her parental rights are terminated because she has a criminal conviction resulting from the death of her child by physical abuse?

2. Whether a parent is denied equal protection of the law where her parental rights are terminated because she has a criminal conviction resulting from the death of her child by physical abuse?

INDEX

Page

QUESTIONS PRESENTED..... i

TABLE OF AUTHORITIES..... iii

OPINION BELOW..... 1

NATURE OF THE CASE..... 1

ARGUMENT:

PARENTAL RIGHTS MAY BE TERMINATED WHERE A PARENT HAS A CRIMINAL CONVICTION RESULTING FROM THE DEATH OF A CHILD BY PHYSICAL ABUSE..... 3

A.

The Statute Does Not Violate A Parent's Right To Due Process Of Law..... 3

B.

The Statute Does Not Violate A Parent's Right To Equal Protection Of Law..... 5

CONCLUSION..... 7

TABLE OF AUTHORITIES

Page

Estelle v. Dorrough, 420 U.S. 534, 95 S.Ct. 1173, 43 L.Ed.2d 377 (1975) 6

Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 96 S.Ct. 2562, 49 L.Ed.2d 520 (1976) 5

McGowan v. Maryland, 366 U.S. 420, 81 S.Ct. 1101 (1961) ... 6

San Antonia Independent School District v. Rodriguez, 411 U.S. 1, 93 S.Ct. 1278, 36 L.Ed. 16 (1973) 5

Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322 (1969) ... 5

Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) 4,6

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

PAMELA RAY,

Appellant,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Appellee.

On Appeal From The Appellate
Court Of Illinois,
Fifth District

APPELLEE'S MOTION TO DISMISS OR AFFIRM

The appellee moves this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Appellate Court of Illinois, Fifth District, on the ground that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

OPINION BELOW

The opinion below is cited in People v. Ray, 88 Ill. App. 3d 1010, 411 N.E.2d 88 (5th Dist. 1980) and is attached to this motion.

NATURE OF THE CASE

A petition was filed in the Circuit Court of Illinois, asking that the respondent's parental rights be terminated.

Subsequently, the respondent was convicted of murder and cruelty to children and sentenced to concurrent terms of twenty and two years. The victim was the respondent's seventeen month old daughter.

The Appellate Court of Illinois affirmed the conviction in People v. Ray, 80 Ill. App. 3d 151, 399 N.E.2d 977 (5th Dist. 1979). The Illinois Supreme Court denied leave to appeal on May 29, 1980.

On March 16, 1979, following the conviction, the State filed a motion for summary judgment, requesting that the respondent be found unfit pursuant to the Illinois Adoption Act, Ill. Rev. Stat. 1979, ch. 40, § 1501(D)(f). On May 9, 1979, the Circuit Court granted this motion. The Appellate Court affirmed this decision in People v. Ray, 88 Ill. App. 3d 1010, 411 N.E.2d 88 (5th Dist. 1980). The Supreme Court denied the petition for leave to appeal on January 30, 1981.

The respondent now petitions this Court to review the termination of her parental rights.

ARGUMENT

PARENTAL RIGHTS MAY BE TERMINATED WHERE A PARENT HAS A CRIMINAL CONVICTION RESULTING FROM THE DEATH OF A CHILD BY PHYSICAL ABUSE.

The decision below should not be reviewed or altered. The respondent was found to be an unfit parent after she was convicted of the murder of her seventeen month old daughter. In Illinois, a parent can be declared unfit on the following ground:

* * *

> a criminal conviction resulting from the death of any child by physical child abuse.

* * *

Ill. Rev. Stat. 1979, ch. 40 § 1501 D(f). This Illinois law is constitutional and does not deny a parent due process nor equal protection. The decision is a correct one and does not warrant review by this Court.

A.

The Statute Does Not Violate A Parent's Right To Due Process Of Law.

The respondent urges that she was denied due process because no evidence was introduced as to her treatment of the remaining children before her parental rights were terminated. However it has been proved beyond a reasonable doubt that the respondent was guilty of the murder of one of her children and was convicted of murder and cruelty to children. Such convictions, the legislature has deemed, demonstrate parental unfitness. The statute intends that where a parent has engaged in prior child abuse of such a serious nature, a court need not await injury to each child of that parent before terminating parental rights as to those other children. This legislation, for the protection of the children, is an overriding state interest that withstands constitutional attack.

A parent's rights are terminated under § 1501 D(f) only after there has been a full hearing on all relevant factual issues. The section applies only when it has been resolved that physical child abuse caused a death and this death formed the basis of a conviction. The rules of criminal procedure, the rules of evidence, and the reasonable doubt

standard safeguard all due process rights at this determination.

Once it is shown that the parent has killed a child by means of physical abuse, the legislature has provided that the other minors be removed from that parent's custody for the welfare and safety of the children. This is clearly a legislative end permitted by the Fourteenth Amendment. Stanley v. Illinois, 405 U.S. 645, 653, 92 S.Ct. 1208, 1213. Moreover, the laws of other states making child abuse a ground for termination of parental rights have been upheld against constitutional attack and applied to terminate rights to more than one child based on a finding of abuse of a single child. See Annot., 53 A.L.R.3d 605 (1973).

Under the Illinois statute, mere criminal conviction alone does not demonstrate unfitness. Rather, specification of the victim (a child) and the circumstance (physical abuse as the cause of death) show that the section is rationally related to the goal of protecting children from abuse. A determination that homicide by child abuse is so dangerous to children who come under the care of the offender that it should be made a ground of unfitness is both a rational and a legitimate state interest.

The respondent has been convicted of murder and cruelty to children. This fact led to the legal result that her parental rights were terminated. This legal result promotes a legitimate state interest in protecting children who cannot protect themselves. Respondent's claim is without merit and unworthy of review.

B.

The Statute Does Not Violate A Parent's Right To Equal Protection Of Law.

A strict scrutiny analysis in terms of whether the classification is necessary to promote a compelling government interest is clearly not called for. See Shapiro v. Thompson, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331 (1969). This is because strict scrutiny is warranted "only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 313, 96 S.Ct. 2562, 2566, 49 L.Ed.2d 520 (1976).

The class defined in § 1501 D(f) is not a "suspect class" because it is not a group historically disadvantaged on the basis of race or some similarly immutable quality by virtue of which one is born into the class. Rather, it is proved personal misconduct which brings one within the class defined by that section. San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 28, 93 S.Ct. 1278, 1294, 36 L.Ed.2d 16 (1973).

Neither is respondent's interest in retaining her parental rights a fundamental right for purposes of equal protection analysis. Fundamental rights are those which are explicitly or implicitly guaranteed by the Constitution and lie at the heart of the relationship between the individual and the republican form of nationally integrated government. Included are such interests as the expression of ideas, participation in the political process, travel among the states, and privacy regarding only the most intimate aspects of personal life. Rodriguez, 411 U.S. at 32-34, 93 S.Ct. at 1296-7. Respondent's interest here, however strong and important it may be, is not one among these fundamental rights.

Therefore, the State has wide discretion in enacting legislation which affects some classes differently than others, provided the classification is relevant to the State's objective, and the legislation tends to promote some interest of the State. McGowan v. Maryland, 366 U.S. 420, 425-6, 81 S.Ct. 1101, 1105 (1961). "[L]egislation may impose special burdens upon defined classes in order to achieve permissible ends." Estelle v. Dorrough, 420 U.S. 534, 539, 95 S.Ct. 1173, 1176, 43 L.Ed.2d 377 (1975).

The legislative purpose here involved, protecting the physical welfare of minors and providing for their removal from the custody of their parents when their welfare or safety cannot otherwise reasonably be secured, is clearly among legislative ends permitted by the Fourteenth Amendment. Stanley, supra, 405 U.S. at 653, 92 S.Ct. at 1213. The question, then, is whether the grounds for a finding of parental unfitness provided in section 1501 D(f) rests upon a classification which tends reasonably to promote this end. That is, is this end promoted by permitting the courts to find a person unfit on the ground of membership in a class of persons convicted of killing a child by means of physical abuse? The question almost answers itself. Making proof of fatal child abuse a statutory ground of parental unfitness obviously promotes the State's interest in protecting the welfare and safety of minors.

Therefore, the Illinois statute does not violate any equal protection standard, and the claim is unworthy of review.

CONCLUSION

For the foregoing reasons, the appellee asks that this Court dismiss the appeal from the Appellate Court of Illinois or, in the alternative, affirm the judgment, since the questions presented are not deserving of further review.

Respectfully submitted,

TYRONE C. FAHNER,
Attorney General,
State of Illinois,

HERBERT LEE CAPLAN,

MELBOURNE A. NOEL, JR.,
Assistant Attorneys General,
188 W. Randolph St., Suite 2200,
Chicago, Illinois 60601,
(312) 793-2570,

COUNSEL FOR APPELLEE.

JACK DONATELLI,
Assistant Attorney General,

OF COUNSEL.

APPENDIX

1. to negotiate the purchase price of the land,

2. to discuss project design and HUD requirements, and

3. to schedule the remaining stages in the Turnkey program.

If the drawings, specifications, and price are satisfactory, they will be submitted to the Government with a request for an annual contributions contract under which the acquisition of the property will be financed. The Authority will promptly execute such contract when it is tendered by the Government.

Promptly upon the execution of an Annual Contributions Contract between the Government and the Authority, the Authority will issue to you a firm letter of Intent setting forth the conditions under which you will prepare working drawings and specifications and under which you and the Authority will enter into a Contract of Sale of the property. * * *

If this letter represents your understanding, please sign and return four copies."

The copies were signed and returned by Rutledge dated May 25, 1972. No letter of intent was ever issued and no contract of sale was ever agreed upon. But, the services extended before and after the above-quoted letter were offered with the understanding embodied in it and the Turnkey Handbook.

Accordingly, we find no reason to disturb the holding of the court under the standards established by the *Pedrick* rule.

Affirmed.

JONES, P. J., and KASSERMAN, J., concur.

88 Ill.App.3d 1010
44 Ill.Dec. 182

The PEOPLE of the State of Illinois, Plaintiff-Appellee,

v.

Pamela RAY, Defendant-Appellant.

In the Interest of Gregory RAY, Tamidj Agnew, LaTresha Ray a/k/a LaTresha Agnew, Minors.

No. 79-465.

Appellate Court of Illinois, Fifth District.

Sept. 18, 1980.

Mother appealed from judgment of the Circuit Court, St. Clair County, C. Glennon Stevens, J., terminating her parental rights to her three children. The Appellate Court, Karns, J., held that: (1) applicable equal protection standard, in determining whether statute providing that criminal conviction resulting from death of any child by physical abuse constituted ground for finding of parental unfitness, was whether statutory classification was rationally related to legitimate governmental purpose; (2) statute was not unconstitutional as applied to mother who had been convicted of murder and cruelty to children on evidence of common design and participation in her boyfriend's course of torture and abuse that resulted in death of her child; (3) statute properly promoted overriding state interest and thus withstood constitutional attack on its face, whether viewed as rationally related to legitimate state purpose or necessary to promote compelling state interest; (4) statute did not impose impermissible "irrebuttable" or conclusive presumption; and (5) mother, who had criminal conviction resulting from death of her child by physical child abuse, was unfit parent and parental rights were correctly terminated.

Affirmed.

1. Constitutional Law ⇐242.1(4)

Termination of parental rights based on mere finding of mental retardation

would be arbitrary and irrational under traditional equal protection test. U.S.C.A. Const. Amend. 14.

2. Constitutional Law ⇐242.1(4)

Applicable equal protection standard, in determining whether statute providing that criminal conviction resulting from death of any child by physical abuse will constitute ground for finding of parental unfitness was unconstitutional, was whether statutory classification was rationally related to legitimate governmental purpose. S.H.A. ch. 40, § 1501, subd. D(f).

3. Constitutional Law ⇐42(2)

One who would attack allegedly unconstitutional feature of statute must bring himself within class to whom law is unconstitutional. U.S.C.A.Const. Amend. 14.

4. Constitutional Law ⇐242.1(4)
Infants ⇐132

Statute providing that criminal conviction resulting from death of any child by physical abuse constitutes ground for finding of parental unfitness was not unconstitutional under equal protection clause as applied to mother in determination that mother was unfit parent where mother had been convicted of murder and cruelty to children on evidence of common design and participation in her boyfriend's course of torture and abuse that resulted in death of her child. S.H.A. ch. 40, § 1501, subd. D(f); U.S.C.A.Const. Amend. 14.

5. Infants ⇐132

Statute providing that criminal conviction resulting from death of any child by physical abuse constituted ground for finding of parental unfitness properly promotes overriding state interest and thus withstands constitutional attack on its face, whether viewed as rationally related to legitimate state purpose or necessary to promote compelling state interest. S.H.A. ch. 40, § 1501, subd. D(f); U.S.C.A.Const. Amend. 14.

6. Constitutional Law ⇐255(4)
Infants ⇐132

Statute providing that criminal conviction resulting from death of any child by physical abuse constituted ground for finding of parental unfitness did not impose impermissible "irrebuttable" or conclusive presumption of unfitness, contrary to due process clause, of mother who had been convicted of murder for abuse that resulted in death of her child where no presumption was employed in determination that mother was unfit parent, but rather, State had burden of proving and did prove mother's unfitness on ground held proper; "irrebuttable presumption" challenged by mother was nothing more than relation between fact and its legal result. S.H.A. ch. 40, § 1501, subd. D(f); U.S.C.A.Const. Amend. 14.

7. Infants ⇐181

Mother, who had criminal conviction resulting from death of her child by physical child abuse, was unfit parent and her parental rights were correctly terminated under statute providing that criminal conviction resulting from death of any child by physical abuse would constitute ground for finding of parental unfitness. S.H.A. ch. 40, § 1501, subd. D(f).

George R. Ripplinger, Jr., Belleville, for defendant-appellant.

Clyde L. Kuehn, State's Atty., Belleville, Martin N. Ashley, Deputy Director, Stephen E. Norris, Staff Atty., State's Attys. Appellate Service Commission, Mount Vernon, for plaintiff-appellee.

KARNS, Justice:

Respondent Pamela Ray appeals from the judgment of the Circuit Court of St. Clair County terminating her parental rights to her three children, Gregory Ray, age 6, Tamidj Agnew, age 5, and Latresha Ray a/k/a Latresha Agnew, age 2. Specifically, respondent attacks the constitutionality of section 1D(f) of the Adoption Act (Ill.Rev. Stat.1979, Ch. 40, par. 1501D(f)), insofar as it provides that "* * * a criminal conviction resulting from the death of any child by physical abuse * * *" constitutes a ground for a finding of parental unfitness.

The Department of Children and Family Services filed a petition in the trial court alleging that the children were neglected and the respondent was an unfit parent, and requesting that the children be adjudicated wards of the court, that the respondent be adjudicated unfit and her parental rights terminated, and that a guardian be appointed with power to consent to adoption. Subsequently, the respondent was convicted of murder and cruelty to children and sentenced to concurrent terms of 20 and 2 years. The victim was respondent's daughter, Sheritta Agnew, who was 17 months of age at the time of her death. We affirmed the respondent's conviction, and the supreme court denied leave to appeal *People v. Ray* (5th Dist. 1979), 80 Ill. App.3d 151, 35 Ill.Dec. 688, 399 N.E.2d 977, *leave to appeal denied* (May 29, 1980).

Following defendant's conviction, the State filed a motion for summary judgment in the instant proceeding alleging that no material issue of fact existed concerning the respondent's unfitness under section 1D(f) of the Adoption Act, and requesting that the respondent be found unfit and her parental rights terminated. Subsequently, the court granted this motion. Also, in proceedings not challenged here, the court found the children neglected as alleged in the petition, adjudicated them wards of the court, and entered guardianship orders.

Respondent contends that the statute violates equal protection and due process. The State asserts that the applicable equal protection standard is whether the statutory classification is rationally related to a legitimate governmental purpose, rather than the "strict scrutiny" analysis of whether the classification is necessary to promote a compelling governmental interest. The respondent apparently concedes that the rational relationship test applies, for in her brief it is said that the "determining question" is whether "* * * the classification is reasonable in light of its purpose * * *."

The parties have not cited nor are we aware of any case in which our own supreme court or the United States Supreme Court has squarely decided the appropriate test for an equal protection challenge to a statutory ground for a finding of parental unfitness. However, in *Regenold v. Baby Fold, Inc.*, (1977), 68 Ill.2d 419, 12 Ill.Dec. 151, 369 N.E.2d 858, *appeal dismissed* (1978) 435 U.S. 963, 98 S.Ct. 1598, 56 L.Ed.2d 54, our supreme court did review a mother's claim that her consent to adoption was procured by fraud and duress and her constitutional attack on the law concerning termination of parental rights by consensual adoption. In considering the constitutionality of the legislative restriction on revocability of parental consent, the court balanced the state's *parens patriae* authority to legislate for the protection of children against the right to maintain parental ties with one's natural child. The court quoted the test stated in *Meyer v. Nebraska* (1923), 262 U.S. 390, 399–400, 43 S.Ct. 625, 627, 67 L.Ed. 1042, 1045, that parental rights "* * * may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect." (68 Ill.2d at 438, 12 Ill.Dec. at 159, 369 N.E.2d at 866.) The court then applied this test, holding that the legislative restriction on the revocability of consent to adoption was reasonably related to the State's authority to legislate with regard to the adoption of children and for their general welfare.

Although *Regenold* involved consensual adoption, it constitutes some authority for the application of the rational relationship test here, where legislation for the termination of parental rights and protection of children is again called into question. However, the application of "strict scrutiny" would appear to be supported by a recent decision of this court. (*Helvey v. Rednour* (1980) 86 Ill.App.3d 154, 41 Ill.Dec. 671, 408 N.E.2d 17.) The issue in *Helvey v. Rednour* was the constitutionality of a provision of the Adoption Act allowing nonconsensual termination of parental rights, without a judicial determination of parental unfitness, based on a finding that the parents were mentally retarded and would remain so for the forseeable future. (Ill.Rev.Stat.1979,

Ch. 40, par. 1510(e).) We cited *Meyer v. Nebraska* and other more recent Supreme Court cases concerning contraceptives (*Griswold v. Connecticut* (1965), 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed.2d 510; *Carey v. Population Services International* (1977), 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675), abortion (*Roe v. Wade* (1973), 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147), and interstate travel (*Memorial Hospital v. Maricopa County* (1974), 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306) to support the conclusion that parental rights are "fundamental" and may not be terminated by State law unless the law advances a compelling state interest. The compelling nature of the State's interest in protecting the welfare of a child was duly noted. However, it was reasoned that not every retarded parent could be found unfit under grounds enumerated in section 1D of the Adoption Act, and that retarded parents, like others, were entitled to a judicial determination of their fitness prior to termination of their parental rights.

[1, 2] This last conclusion is certainly correct, and it might appropriately have been reached by simply holding that termination of parental rights based on a mere finding of mental retardation would be arbitrary and irrational under the traditional equal protection test. As in *Helvey*, the various generalized pronouncements of the Supreme Court relating to parental rights have been interpreted to establish the fundamental nature of those rights in the context of a substantive due process analysis of Iowa parental rights' termination statutes. (*Alsager v. District Court of Polk County, Iowa* (S.D.Iowa 1975) 406 F.Supp. 10, *affirmed* (8th Cir. 1976), 545 F.2d 1137.) No doubt, the pronouncements of the Supreme Court are entitled to careful consideration, perhaps even when their relevance to the issue at hand is rather oblique at best. Nevertheless, without clear authority, we do not feel compelled to depart from the conventional analysis of whether legislation is arbitrary and irrational.

The respondent acknowledges the State's legitimate interest in protecting children who cannot protect themselves. She nonetheless argues that a parent who abuses and kills one child will not automatically mistreat her other children and that the causes of abuse can be treated and eliminated.

Laws of other states making child abuse a ground for termination of parental rights have been upheld against constitutional attack and applied to terminate rights to more than one child based on a finding of abuse of a single child. (Annot., 53 A.L.R.3d 605 (1973).) In Illinois, a finding of parental unfitness on the ground of "depravity" and termination of parental rights to a son and two daughters was affirmed solely upon evidence that the parents had sold one of the daughters into marriage. (*In Interest of Flynn* (3d Dist. 1974), 22 Ill.App.3d 994, 318 N.E.2d 105.) In the context of neglect proceedings based on child abuse, it has been held that all the children of abusing parents may be found neglected even though all have not yet been abused. (*In Interest of Brooks* (1st Dist. 1978), 63 Ill.App.3d 328, 20 Ill.Dec. 39, 379 N.E.2d 872); although, a neglect finding in a similar case was reversed based on affirmative evidence of the mother's care and concern for the unabused child. *In Interest of Baby Boy Butt* (2d Dist. 1979), 75 Ill.App.3d 587, 32 Ill.Dec. 54, 395 N.E.2d 1.

[3–5] We have affirmed the respondent's conviction of murder and cruelty to children on evidence of common design and participation in her boyfriend's course of torture and abuse that resulted in the death of her child. (*People v. Ray.*) The conflict inherent in parental fitness legislation between the State's interest in legislation for the protection of children and the continuation of parental rights must be resolved in favor of the former in this case. One who would attack an allegedly unconstitutional feature of a statute must bring himself within the class to whom the law is unconstitutional. (*City of Chicago v. Lawrence* (1969), 42 Ill.2d 461, 248 N.E.2d 71, *appeal dismissed* (1969), 396 U.S. 39, 90 S.Ct. 263, 24 L.Ed.2d 208.) To speak hopefully of the possibility of treatment and rehabilitation or to hypothesize circumstances where a

parent may abuse one child but not another would be pure speculation on the record before us. Furthermore, apart from the specific facts before us, we believe that the statute properly promotes an overriding state interest and thus withstands constitutional attack, whether viewed as rationally related to a legitimate state purpose or necessary to promote a compelling state interest.

Yet to be discussed is the respondent's reliance on *Stanley v. Illinois* (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551. *Stanley* held that to presume an illegitimate father unfit as a parent is contrary to the Due Process Clause of the Fourteenth Amendment, and that the parental rights of an illegitimate father, like those of any other parent, could not be terminated without a judicial determination of unfitness.

[6] The respondent argues that the statute before us also imposes an impermissible "irrebuttable" or conclusive presumption. We fail to see that the statute constitutes a conclusive presumption or a presumption in any sense.

[7] In *Stanley*, the father was presumed unfit in the sense that, because of illegitimacy, he was required to institute a proceeding and to bear the burden of establishing parental authority for custody of his children. No such presumption was employed in the instant case. Rather, the State bore the burden of proving and did prove the respondent's unfitness on a ground we have held proper. As argued by the State, the "irrebuttable presumption" challenged by the respondent is nothing more than the relation between a fact and its legal result. In light of the undisputed facts that the defendant had a criminal conviction resulting from the death of any child by physical child abuse, the court correctly determined that there was no material issue of fact and granted summary judgment finding her unfit and terminating her parental rights.

The judgment of the Circuit Court of St. Clair County is affirmed.

AFFIRMED.

JONES, P. J., and SPOMER, J., concur.

88 Ill.App.3d 968
44 Ill.Dec. 186

Alan ROTHENBUECHER,
Plaintiff-Appellee,

v.

Margaret A. TOCKSTEIN and Hazel B. Jones.

Margaret A. Tockstein,
Defendant-Appellant.

No. 79-535.

Appellate Court of Illinois,
Fifth District.

Sept. 18, 1980.

Offeree brought action against offeror for specific performance of a sale contract to purchase a duplex. The Circuit Court, St. Clair County, Patrick J. Fleming, J., entered judgment for offeree, and offeror appealed. The Appellate Court, Harrison, J., held that no valid contract of sale existed between the parties where acceptance of the offer was not communicated to offeror within a 24-hour period as required by the offer.

Reversed.

1. Specific Performance ⇐28(1)

Where a contract is in doubt so that an obligation to fulfill the alleged promise may never have arisen, equity will decline to enforce performance.

2. Vendor and Purchaser ⇐17

Mutual assent necessary to formation of a bilateral contract requires the communicated expression of a promise to purchase and an acceptance in form of a promise to sell.

3. Contracts ⇐19

An offeree's power to accept is terminated by either revocation of the offer or nonoccurrence of any condition of acceptance under terms of the offer.